PRODUCT LIABILITY/Cloture on Substitute (2nd Attempt)

SUBJECT: **Product Liability Fairness Act . . . H.R. 956. Gorton motion to close debate on the Gorton substitute amendment No. 596.**

ACTION: CLOTURE MOTION REJECTED, 47-52

SYNOPSIS: As passed by the House, H.R. 956, the Product Liability Fairness Act, will establish uniform Federal and State civil litigation standards for product liability cases and other civil cases, including medical malpractice actions.

The Gorton substitute amendment, as amended, would amend product liability law in Federal and State actions by abolishing the doctrine of joint liability for noneconomic damages, creating a consistent standard for the award of punitive damages and limiting such damages, and requiring the disclosure of attorney fees (see vote No. 135). It would also reform medical malpractice liability laws (see vote Nos. 137-144), provide sanctions for frivolous suits (see vote No. 136), and cap punitive damage awards in civil cases affecting commerce (see vote No. 146).

On May 2, 1995, Senator Gorton sent to the desk, for himself and others, a motion to close debate on the Gorton substitute amendment, as amended.

NOTE: A three-fifths majority (60) vote of the Senate is required to invoke cloture. This vote was the second attempt to invoke cloture on the Gorton substitute amendment, as amended (see vote No. 151).

Those favoring the motion to invoke cloture contended:

During the course of this debate, numerous amendments have been adopted that have greatly broadened the bill's scope. These amendments may offend trial lawyers, but they are urgently desired by the American people. Unfortunately, it appears that less than 60 Senators will be willing to stand with the American people by voting for cloture. Too many Senators are determined to protect the strongest lobby in America, the American Trial Lawyers Association. That association and its members contribute more to congressional candidates than all the Fortune 500 companies put together. Apparently, those contributions have gone to winning

(See other side)

YEAS (47)

Republicans (45 or 83%)		Democrats (2 or 4%)
Abraham	Hatfield	Exon
Ashcroft	Helms	Lieberman
Bennett	Hutchison	
Bond	Inhofe	
Brown	Jeffords	
Burns	Kassebaum	
Campbell	Kempthorne	
Chafee	Kyl	
Coats	Lott	
Coverdell	Lugar	
Craig	Mack	
DeWine	McCain	
Dole	McConnell	
Domenici	Murkowski	
Faircloth	Nickles	
Frist	Pressler	
Gorton	Santorum	
Gramm	Smith	
Grams	Snowe	
Grassley	Stevens	
Gregg	Thomas	
Hatch	Thurmond	
	Warner	

NAYS (52)

Republicans (9 or 17%)	Democrats (43 or 96%)	
Cochran	Akaka	Hollings
Cohen	Baucus	Inouye
D'Amato	Biden	Johnston
Packwood	Bingaman	Kennedy
Roth	Boxer	Kerrey
Shelby	Bradley	Kerry
Simpson	Breaux	Kohl
Specter	Bryan	Lautenberg
Thompson	Bumpers	Leahy
	Byrd	Levin
	Conrad	Mikulski
	Daschle	Moseley-Braun
	Dodd	Moynihan
	Dorgan	Murray
	Feingold	Nunn
	Feinstein	Pryor
	Ford	Reid
	Glenn	Robb
	Graham	Rockefeller
	Harkin	Sarbanes
	Heflin	Simon
		Wellstone

NOT VOTING (1)

Republicans (0)	Democrats (1)
	Pell-[1AY]

EXPLANATION OF ABSENCE:
1—Official Buisiness
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

candidates who support lawyers, because we cannot even get 60 votes in favor of closing debate on this bill that 83 percent of Americans favor, and only lawyers viscerally oppose.

Lawyers love the lotto liability system in which they can hit the jackpot with multi-million punitive damage awards, such as the $2 million award recently given in an Alabama case because a car company did not disclose that it did $601 in repairs to a new car before selling it. They love this system that adds about $8 to an $11.50 DPT childhood vaccination, $20 to the cost of a $100 stepladder, and $500 to the cost of a new car. They love the fact that they get to take between one-third and one-half of the awards their clients need to be made whole for their damages, and they do not mind at all that the more severely injured Americans are the ones who are most likely not to receive full compensation.

Americans, though, are not at all enamored with the system. They do not like paying for a battery of unnecessary medical tests that a doctor routinely orders to guard against unjustified suits; they do not like that the Capital area Girl Scouts must sell 87,000 boxes of cookies a year just to pay liability insurance; they do not like that the per person cost of our tort system is $1,200 per year. Fully 83 percent of all Americans support the reforms in this bill, but we sincerely doubt we will get even 60 percent of Senators willing to vote to close debate.

If we fail on these cloture votes, we are willing to discuss limiting the reforms in this bill in order to pick up more votes. Some Senators who are for product liability reform have indicated that they are going to vote against cloture because they do not favor some of the issues that have been added during debate. Should negotiations be necessary, these Senators should not be too intransigent. Taking out some items may gain their votes, but may then lose others. If the bill becomes too weak, there will be no point in passing it. Certainly our preference would be to pass this bill as it is currently constituted, and we urge our colleagues to join us in voting for cloture to further that end, but we also assure our colleagues that failing to invoke cloture now will not doom passage of this bill.

Those opposing the motion to invoke cloture contended:

Argument 1:

When the Senate began considering this bill, it had before it a bill that would usurp State laws to correct nonexistent problems in their product liability systems by greatly limiting the right of injured parties to civil redress. After days of debate and votes on numerous amendments, the bill is now even more draconian. We opposed it before, and we oppose it even more strongly in its amended form. With its cap on all punitive damages and its medical liability provisions, the Senate bill has come to resemble the horrendous bill that the House passed on tort reform. Even if the Senate had not accepted these amendments, though, it is likely that the similar House provisions would have been retained in conference because the Speaker of the House, who has great influence, favors them. Thus, from the outset, it was virtually certain that the Senate would be asked to vote on a bill or conference report containing broad restrictions on Americans' right to sue for civil damage awards. Perhaps the only thing more certain from the outset is that we would vote against cloture on any version of this bill.

Argument 2:

We have been fighting for product liability reform in the Senate for years without success. This year, however, we have a rare window of opportunity. If Senators keep this bill narrowly focused on the subject of product liability, we are very optimistic that the President will sign it. However, adding extraneous subjects, such as medical malpractice reform, will doom it. The Senate may have the votes to invoke cloture on such a bill, but they do not have the votes needed to override a veto. Nevertheless, the Senate has followed the House lead in adding such items. In the House, these additions actually increased the popularity of the bill, but in the Senate they are very controversial. We are not necessarily against medical malpractice reform or any of the other reforms that have been attached; instead, we understand that attaching them to this bill will not mean that we will get them as well, but will instead mean that we will get nothing. Therefore, as a tactical maneuver, we will vote against both motions to invoke cloture in an effort to convince our colleagues to strip all provisions from the bill that do not relate to product liability reform. If we take that action, and then prevail in conference, true product liability reform may finally be enacted.